

CONSUMPTION, CIVIL ACTION, AND CORPORATE POWER

Lessons from the Past, Strategies for the Future

by Ward Morehouse

SIMON ZADEK AND Franck Amalric in their essay, "Consumer Works!" argue that consumption-based civil activism can be one of the "transforming drivers" in the struggle to move the world onto a more sustainable path of development. They qualify this proposition with the words "at least in part." It is hard to disagree with their proposition so qualified. The key question then becomes how significant is that part attributable to consumption-based civil activism. Before turning to that critical question, it is necessary to understand some of the startling changes that have been occurring in the global political economy, and which have substantial impact on patterns of global consumption.

The picture that emerges is one of largely unmitigated bad news if the ultimate and overriding goal is to create a more environmentally and socially sustainable future. What has been happening in recent decades has been an accelerating drive toward creating a global consumer culture through the increasing concentration of wealth and power in giant corporations, larger than most nation states.¹

THE ROLE OF CORPORATIONS

The annual revenues of the 500 largest corporations in the world—the "Global 500"—are some \$10 trillion, around twice the size of the gross domestic product of the United States, the biggest economy in the world. In a single year, 1994, the Global 500 revenues increased by 9 percent, and profits soared by a colossal 62 percent. The Global 500 in that same year eliminated 262,000 jobs.² Even more striking is the startling rate of capital accumulation among the top 200 global corporations. "The velocity of transnationalisation of capital as measured as a share of world GDP," writes Frederic Clairmont, "is stunning: from 17 percent in the mid-1960s to 24 percent in 1982 and over 32 percent in 1995."³

The drive to create a global consumer culture, and its impact on our increasingly stressed biosphere, have been well documented in a number of recent books.⁴ Given the enormous concentration of wealth and power in the boardrooms of giant corporations, and their determined effort to lock us all into unsustainable patterns of consumption, resistance on a global scale has been largely incommensurate.

CIVIL ACTIVISM AND THE WATCHDOG ROLE

Zadek and Amalric suggest that civil activism may have played a not unimportant "watchdog role" in instances involving sweatshop labor by The Gap and Nike corporations; and environmental destruction and violations of the human rights of indigenous peoples by the British Petroleum Corporation in Colombia, and Shell Corporation in Nigeria. Since the thrust of their essay is to link consumption with civil action, I assume they have in mind boycotts in one form or another. While the threat of a consumer backlash—stimulated by unfavorable publicity—may have played some role in these cases, other strategies not necessarily linked to consumption have also been involved (for example, litigation in the case of British Petroleum and Shell, and governmentally sanctioned codes of conduct with monitoring—if not enforcement—mechanisms). But there seems to me to be little evidence, so far at least, of any "transforming" impact on these corporations.

Let us look at two other examples with a longer time horizon to illustrate a countervailing proposition—namely, that attempts to affect corporate behavior by making it less "unsustainable" (however that may be defined) are likely to be transitory in impact unless they diminish the structures of power that sustain these corporations.

MAKING CORPORATE BEHAVIOR SUSTAINABLE?

Consider what happened after the Union Carbide Corporation caused the worst industrial disaster in history when its pesticide plant gassed the sleeping city of Bhopal in India, killing 10 to 20 thousand (we shall never know the exact number), and injuring hundreds of thousands more. After the disaster Carbide's management recognized that it was vulnerable to boycotts of the corporation's consumer products and, as one element in their response to this massive human tragedy, divested the corporation of its consumer products. This was done ostensibly as part of the Carbide management's defense against a hostile takeover bid by another chemical company. However, there is little doubt in the minds of those of us who have been supporting the struggle for justice by the Bhopal victims, that insulating the corporation from a possible consumer backlash over Bhopal was also a critical determinant in this divestment action. By the time these divestments were effected, Union Carbide Corporation announced to the world that it had become an "industrial company," meaning that it sold goods and services only to other industrial companies, which in effect screened Carbide from consumption-based civil activism.⁵

Of course, a divestment strategy as a means of insulating a corporation from consumption-based civil action is not equally available to all large corporations. But as long as corporations of this size are

essentially sovereign entities, capable of transforming themselves into whatever form their management decides, they have the potential for defusing this type of civil action.

Or consider the case of Nestlé S.A. Corporation⁶ and its infant formula products. During the early 1980s a worldwide campaign was mounted to prohibit Nestlé and other manufacturers of infant formula from marketing their products in an aggressive and deceptive manner in Third World countries. One of the seemingly great triumphs of consumer-based civil activism was the adoption of a code for marketing infant formula in developing countries by the World Health Organization, and its acceptance by Nestlé.

But what happened subsequently surely must have been discouraging to those who led this worldwide campaign. The Nestlé's S.A. Corporation "discovered" loopholes in the code of conduct large enough for them to resume the previously used deceptive marketing practices. Indeed, the Nestlé S.A. Corporation's actions had become so blatant that UNICEF felt compelled to initiate a baby-friendly hospital initiative to counter this behavior. The UNICEF initiative advocated that Third World countries adopt legislation prohibiting such marketing of infant formula, and establish public and professional education measures aimed at assuring effective implementation of such legislation.⁷

LESSONS TO CONSIDER

The lesson which emerges from these and other similar examples is that consumption-based civil actions are not likely to become transforming drivers unless they address the roots of corporate power, and in some fundamental way alter the distribution of political and economic power in today's world.

Since corporations can continue to rule the world only as long as they are able to sell their goods and services, it seems entirely plausible, in theory, to argue that consumer-based civil actions could be transforming drivers in moving the world toward a more sustainable path of development. After all, we are, all of us as consumers, complicit in maintaining corporate dominance of the global political economy.

If we would all simultaneously stop buying the products of a given corporation, we would put it out of business. The frequency with which consumer boycotts occur only one form of consumer-based civil activism, to be sure, but a widely used form is reflected in the pages of the U.S.-based publication *Boycott Quarterly*. It lists dozens, if not hundreds, of consumer boycotts in progress in any given moment. But few of them appear to achieve any transforming effect on their proclaimed targets. So, at least this form of consumption-based civil action remains attractive in theory, but extremely difficult in practice.

Nonetheless, ending corporate rule will need to reach well beyond consumption-based civil activism, even though such activism can certainly play a significant role. The largest corporations in the world today are simply too big to be subject to the meaningful democratic control which, I would argue, is essential to building a more just and sustainable social order. Any realistic strategy to achieve this goal must come to grips with the need for dismantling these global giants.

NOTES

1 A comparison was made of the gross revenues of those corporations identified in *Fortune's Global 500: The World's Largest Corporations* published by *Fortune Magazine*, and the gross domestic product figures (GDP) of the nations of the world as published in the annual *World Development Report* by the World Bank. Corporations now comprise 50 of the 100 largest economies in the world.

2 Clairmont 1996.

3 Clairmont 1997.

4 See Barnett and Cavanagh 1994, Korten 1995, Martin and Schumann 1997, and Karliner 1997.

5 The struggle against the Union Carbide Corporation is described in Morehouse *And Not to Yield: The Long Struggle Against Union Carbide* 1997. See *Unfinished Business: Bhopal Ten Years After* in this volume.

6 The S.A. is a French-language acronym for *Societe Anonyme*, translated to English as anonymous society. Consider this definition of the corporate form. Ed.

7 This information comes from remarks made by Leah Margulies at the National Lawyers Guild Convention (October 18, 1987). She played a leading role in the infant formula campaign and in UNICEF's baby friendly hospital initiative.

CORPORATIONS MUST NOT SUPPLANT “WE THE PEOPLE”

by Richard L. Grossman

TALK OF CAMPAIGN finance has long been in the air. President Clinton and those rabid freshmen Republican congressmen—along with many others across the political spectrum—have been insisting they really and truly want to get big money out of elections. Impatient citizens in Maine and California have gathered enough signatures to place ballot measures before the voters next November, measures that attempt to limit campaign contributions.

It is healthy that so many are intent on fixing up this important part of our democratic process. But I believe the debate and the remedies so far have shied away from asking this basic question: Why should we, the sovereign people, permit giant corporations to contribute any money to candidates or referenda?

Corporations, after all, are not flesh and blood. Corporations are legal fictions, not included in “We The People,” and not even mentioned in the federal Constitution. Corporations are chartered to conduct business, not to be political organizations. And a primary purpose of today’s corporate form is to erect a legal shield between a corporate decision-maker and the people.

Nonetheless, the U.S. Supreme Court has decreed that corporations are artificial persons, with First Amendment—that is, free speech—rights. In *Buckley v. Valeo* (1976), a majority of the justices declared corporate cash a form of “free speech.” Two years later, in *First National Bank v. Bellotti*, Justice Lewis Powell wrote that corporate spending to influence votes during a referendum campaign “is the type of speech indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual.”¹

Because corporate fictions are now regarded under law as persons, their executives are free to use their corporations’ power—and their stockholders’ money—to further their own personal and political goals. Several Supreme Court justices in a number of cases have objected to this point of view, and their thoughts are instructive.

For example, Justices Byron White, William Brennan and Thurgood Marshall, dissenting in the *Bellotti* case, wrote:

Corporations are artificial entities created by law for the purpose of furthering certain economic ends . . . It has long been recognized . . . that the special status of corporations has placed them in a position to control vast amounts of economic power which may . . . dominate not only the economy but also the very heart of our democracy, the election process . . . The State need not permit its own creation to consume it.

In a dissent from another Supreme Court majority opinion in 1986 expanding corporations’ rights to interfere in elections, *Pacific Gas & Electric Co. v. Public Utilities Commission*, Chief Justice William Rehnquist wrote:

To ascribe such artificial entities [corporations] an “intellect” or “mind” for freedom of conscience purposes is to confuse metaphor with reality.

Justice Brennan, in *Federal Election Committee v. Massachusetts Citizens For Life, Inc.*, wrote in 1986 that:

Direct corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace . . . The resources in the treasury of a business corporation . . . are not an indication of popular support for the corporation’s political ideas. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.

Often, logical and rational dissents on the high court have eventually become the law of the land. I, for one, believe that in the not too-distant future, the American people will insist that corporations must not be granted the rights of people, and that corporations will be barred from contributing any money whatsoever to candidates, to political parties, or on behalf of initiatives and referenda.

But that will only be a step toward claiming our democracy. We will also need to get corporations out of our city councils, our state houses, our Congress and our schools. This is because giant corporations—often global in reach—are awash in money, and have learned to use this money to flood us with misinformation, to distort basic values, and to shape public debate as their unelected executives see fit.

Between 1980 and 1992, the 500 largest U.S. industrial corporations more than doubled their assets, from \$1.8 trillion to \$2.57 trillion,² while shedding over 5 million jobs. The Wall Street Journal proclaimed that the first quarter of 1995 brought “the highest level of corporate profitability in the post-war era, and probably since the latter stages of the Bronze Age.”³

And the rest of 1995 saw the money continue to roll in—enough to pay corporate CEOs an average compensation package of more than \$3.5 million.

With over \$100 billion spent in direct advertising each year (subsidized by the rest of us, given that corporate advertising is tax deductible), our giant corporations can shape an awful lot of minds.

Increasingly, people are realizing that corporate wealth, in concert with corporate control over jobs

and the economy, allows a relative handful of corporate executives in a few hundred giant corporations to promote some ideas while undermining others, to solidify certain values while neglecting or even ridiculing others.

With their ubiquitous lobbyists (also paid with tax-deductible money), direct access to elected officials, and ownership of radio, television, newspapers and magazines, corporations influence (and even write) our local, state and federal laws.

Corporations have been acting like We the People, exercising the political rights of flesh and blood citizens. The Program on Corporations, Law and Democracy has been convening meetings around the country at which people have been "Rethinking the Corporation, Rethinking Democracy." People Corporations Must not Supplant "We the People" have begun researching the corporate histories of their states, and asking why our politicians and our courts have granted so many rights and powers to legal fictions. We are finding that when people discover how earlier generations of Americans had forbidden corporations to interfere in our elections and our lawmaking, they are no longer content merely with placing a ceiling on campaign contributions.

It is not enough to get big money out of politics. Rather, We the People -- the flesh and blood self-governing people in the tradition of those who came together to form a more perfect union -- must now remove corporations entirely from our elections, our lawmaking, and from public education.

To accomplish this, we must challenge the absurd notion decreed by the United States Supreme Court in 1886⁴ that corporations have the constitutional right to use their wealth, power and propaganda to overwhelm the sovereign people, and prevent the flowering of our democracy.

NOTES

1 This ruling legalized 'advertisements.' Corporations use them to influence public opinion and public policy, and to legitimate corporate "citizenship."Ed.

2 Statistical Abstract of the United States 1994, Table 870.

3 Lowenstein 1995.

4 Santa Clara v. Southern Pacific Railroad Co.

WHY WE RESEARCH CORPORATE LAW by Jane Anne Morris

INTRODUCTION

THIS PUBLICATION is about how to use the dusty tomes in a law library to reconstruct part of the story of how corporations came to run this country.

This reconstruction will not be a rehash of tales of robber barons, swindlers, and the usual roster of ruthless greed mongers. It will be more like hearing about Adam and Eve, Isaac Newton, or apple pie—but from the apple's point of view.

The story you are researching is the story of the dismantling of democracy by corporations. Environmental lawyers don't know this story because they are busy with administrative law, chasing parts per million back and forth between the regulatory agencies and the courts. Corporate lawyers don't know this story because they work with current corporation law to increase profits further, and tighten corporations' already vise-like grip on the political process. Activists up to their eyeballs in crises find themselves rushing around trying to do what needs to be done, leaving little time to explore why we limit our activism to arenas defined and designed by the corporate opposition.

Your efforts to reconstitute the story of the dismantling of democracy will be easier if you know what you're looking for, and have some idea of how to use a law library. This guide provides some of both.

It is intended to be used in conjunction with other materials from the Program on Corporations, Law and Democracy. Taken together, they represent an effort to revitalize a perspective on the history of corporations in the U.S. that will help guide your research.

When people say that corporations are running the country (and the world), they mean that corporations have used their power to take over the role of governing that in a democracy belongs to the people.

But much current activism involves efforts to adjust corporate behavior without having to reduce corporate power. Adding a chemical to a list, taking a bird off a list, writing more letters to the Forest Service, putting a labor representative on a task force, or asking a corporation to employ more minorities in its quest to plunder the planet and enslave its inhabitants while enriching the fortunes of a few—will not alter the dominant governance role of corporations.

Even if we had time to address each harm one at a time, we would be no closer to having a democracy because we would still not be in control.

The free flow of information and the ferment of public debate are prerequisites for democratic self-governance. Self-governing people do not dump toxic chemicals into their water supply. They do not destroy the resources that their future depends on. They do not blame this or that minority for conditions arising from and sustaining the greed of a few. Corporations do all of these things and more.

If we the People are to live in a sane and just world, we must do more than slow or stop particular corporate harms. We must assume the power of governance that, in the United States, corporations have usurped over the last century and a half.

The story of how corporations accomplished this usurpation has been hidden but not obliterated. It lives in the traditions of Native Americans, in the songs of labor struggles, and in the lore of immigrant families. Fragments are scattered among footnotes in history books. Much of it is outlined in black and white in the constitutions, laws, and court cases that fill the shelves of law libraries.

Most people who use law libraries today do so in order to preserve, defend, and expand corporate "rights," corporate property, and corporate profits. Most current legal documents reflect the world view that it is "natural" that corporate "persons" have constitutional rights, that they play a governance role, and that they can and do make or break whole economies and topple governments.

But fifty years ago opinion wasn't nearly so harmonious. A century ago there was still real debate. And before that, the corporate view was a decidedly minority opinion.

For instance, the founding fathers of this nation deserve "Hall of Shame" membership for failing to recognize Native Americans, blacks, women, and unpropertied white males as possessing the rights of natural persons and citizens. But to their credit, it never occurred to the framers of the Constitution that corporations should have the right to due process and equal protection, or First Amendment rights, such rights belonging exclusively to "natural" (i.e., human) persons and having no sensible application to the legal fiction that is the corporation.

Similarly, it was once taken for granted that corporations exist only at the pleasure of the people, that their purpose is to fulfill a public need, and that if they exceed their specific purpose, or fail to adequately perform it, they are to be banished or dissolved.

That these ideas seem so shocking today only underlines how much ideological authority we have ceded to corporations.

In your research you will uncover laws that defined corporations as subordinate entities with limited powers, always subject to further amendment to better fit the public interest. Then you will see how corporations responded.

Over a period of many generations, corporate lawyers in drawing rooms, cloak rooms and court rooms, worked over our imperfect but promising democracy clause by clause. In all too many instances, when a law got in the way of corporate power, the corporations either got rid of it, weakened it, prevented

it from being enforced, got it declared unconstitutional, or influenced the judicial interpretation of it so as to render it inconsequential.

While the rights of most human persons were denied or diminished, corporations acquired by sleight-of-hand the constitutional rights of "natural" persons. These newly anointed corporate "persons" claimed and gained constitutional protections for their "property," which was first construed to be something tangible, expanded to include the intangible, and now includes the imaginary.

And, just as the rights of "corporate" persons grew at the expense of the rights of "natural" persons, they grew also at the expense of the rights of "natural" persons who happened to have "jobs." Workers' rights to freedom of speech and of assembly, freedom of association, due process, and equal protection before the law, among others, were twisted and suppressed as corporations wrote the laws that defined not only themselves, but the labor "opposition."

Corporations, once strictly defined by people acting through their legislatures, have since the late nineteenth century been defining themselves and redefining us. They write the laws and shape the government that supposedly "regulates" them. Corporations essentially define our economy, our society, our jobs, our educational system, and our leisure time. Our state legislatures once defined corporations as subordinate entities, yet now We the People find every aspect of our lives subordinated to corporate "needs."

Corporation representatives worked a phrase at a time to deconstruct legal doctrines that protected persons, and transmute them through the alchemy of power into doctrines to protect and empower corporations.

In so doing they left a trail of tears in the fabric of democracy. The pattern of the violence they did to the democratic process is like a map that we can read to understand the nature of the damage, and then either work to repair it, or replace it with a more democratic weave.

What you can do in a law library is to trace this process in the context of your own state's history.

POINT ARENA CITY COUNCIL RESOLUTION **by Alis Valencia & Jan Edwards**

ON APRIL 25, 2000, the City Council of Point Arena, California, passed by a vote of four to one, a non-binding resolution that challenges the concept of corporate personhood. Why this is significant:

- This is the first such action taken in the United States.
- It represents a new strategy designed to define corporate power. Rather than use incentives and regulations to guide corporate behavior—practices that at best result in incremental gains in the public interest—the citizens of Point Arena have asserted their democratic right to challenge a fundamental aspect of corporate existence. They have taken a step to assert sovereignty over corporations.
- Communities and groups across the United States and Canada are pursuing complementary tactics designed to define what corporations can and cannot do.
- These activities are manifestations of a new movement supporting the spread of political and economic democracy.

BACKGROUND

The Supreme Court first gave corporations, a legal creation, personhood (for purposes of the Fourteenth Amendment) in an 1886 decision.¹ Corporations have used this court-assigned status since the late nineteenth century to advocate successfully for having the protections and rights granted to people by the U.S. Constitution and Bill of Rights—with the complicity of the courts and legislature. As a consequence, corporations have been able to limit governmental efforts at regulation, constrain the workings of democracy, and subordinate the rights of people.

Members of the Redwood Coast Chapter of the Alliance for Democracy were inspired to challenge corporate personhood by the work of the Program on Corporations, Law and Democracy (POCLAD), an organization devoted to “instigating democratic conversations and actions that contest the authority of corporations to govern.” Alliance members engaged members of the community of Point Arena in learning about corporate personhood, its history and consequences, and the consequences of revoking it. They then placed a Resolution on Corporate Personhood before the City Council. Following sessions of public debate and revisions of the original document, the City Council adopted the following resolution.

RESOLUTION ON CORPORATE PERSONHOOD IN THE CITY OF POINT ARENA

" Whereas, the Citizens of the City of Point Arena hope to nurture and expand democracy in our community and our nation; and

" Whereas, democracy means governance by the people and only natural persons should be able to participate in the democratic process; and

" Whereas, interference in the democratic process by corporations frequently usurps the rights of citizens to govern; and

" Whereas, corporations are artificial entities separate and apart from natural persons, are not naturally endowed with consciousness or the rights of natural persons, are creations of law and are only permitted to do what is authorized under law; and

" Whereas, rejecting the concept of corporate personhood will advance meaningful campaign finance reform.

" Now, therefore, be it resolved that: the City Council of the City of Point Arena agrees with Supreme Court Justice Hugo Black in a 1938 opinion in which he stated, ‘I do not believe the word ‘person’ in the Fourteenth Amendment includes corporations’;² and

Be it further resolved that the City of Point Arena shall encourage public discussion on the role of corporations in public life and urge other cities to foster similar public discussion.

NOTES

1 Santa Clara v. Southern Pacific Railroad Co.

2 Connecticut General Life Insurance Company v. Johnson, Treasurer of California, p. 82.

LETTER TO THE ALLIANCE FOR DEMOCRACY
by Mike Ferner & POCLAD

24 March 1997

Wade Hudson
Alliance for Democracy

Dear Wade,

I'm writing you this letter on behalf of the Program on Corporations, Law, and Democracy. We hope this will begin an ongoing discussion about corporations and their proper place in a democratic society—something that is important to all of us. What prompts this letter is the November 27, 1996, memo you wrote at the Alliance for Democracy founding convention, reporting on activities at that historic gathering near San Antonio.

Your memo articulated some questions and differences you had with statements made at the Alliance convention by Peter Kellman and Jane Anne Morris. I was at the convention also, but played a minor role. Your memo is valuable because it contains questions we hear as we meet with people around the country. It offers us an opportunity to engage you and other Alliance members who may feel similarly in a discussion that will help make all of our work more successful.

Before addressing individual points of your memo, it's important to summarize the context or the framework within which we labor: As the Preamble to the U.S. Constitution affirms, "We the People" are sovereign in our society. Since these terms are used so frequently these days, we should define their meaning precisely. We mean that "the people" are in charge of fashioning the government, and through it, the economy—particularly the corporate form that was so at issue during the Colonial period and provided significant motivation for the Revolution itself.

Obviously, much easier said than done—and for many reasons. Corporations have had 100+ years to politically, legally, and culturally consolidate gains won in the last century. We've lived all our lives in a corporate culture dominated by corporations, making it hard to think that it's ever not been like this. Today's status quo, thick with corporate values, surrounds us like the air we breathe. An understanding of history is not valued, since consuming new stuff keeps us busy and profits corporations more.

Thus, it's crucial that we learn precisely how it wasn't always this way; how in fact it got like this; how others attempted to break the bonds; and how we can engage others in a journey of exploration so that together we can begin constructing a way out to a better world.

I've seen this effort illustrated in the book, *Ishmael: A Novel*. Early on the teacher explains to the pupil how young people in the sixties "made an ingenuous and disorganized effort to escape from captivity but ultimately failed, because they were unable to find the bars of the cage . . . If you can't discover what's keeping you in, the will to get out soon becomes confused and ineffectual . . . The world is not going to survive very much longer as humanity's captive . . . yet I think there are many among you who would be glad to release the world from captivity." But, the teacher concludes, they're prevented from doing so because "they're unable to find the bars of the cage."

Those bars are not just the visible harms corporations do, great as those may be. The bars are also in our own minds, reinforced daily in myriad ways by corporations, until we believe there is no alternative. I hope this gives you a sense of our approach. With that lengthy bit of introduction, on to eight of the points in your memo.

1. PURPOSE OF THE AMERICAN REVOLUTION

Was the point to (a) get a new king or (b) replace the monarchy with a republic and create the "myth" of a democracy? Peter Kellman (at the convention) argued it was the latter "because they didn't want corporations ruling them," adding that a similar approach is needed today because there are limits to growth.

Being somewhat of a history nut myself, and retaining perhaps too much of a burnished image of the Revolution taught by grade school nuns, I get a little "ouchy" when people refer to creating the myth of democracy, but I am beginning to understand what sampling of that discussion: True, the founding fathers left out the majority of human inhabitants in their "We the People." This is not to say, however, that they didn't believe their own rhetoric in the Declaration, Constitution Preamble, and so forth.

But because they defined most of the humans in the 13 colonies as property or nonpersons, whole classes of people had to struggle for centuries to overcome this atrocious, immoral, structural mess—that is, to define themselves and not let anyone else define them. The myth of democracy though can be something beyond that grossly incomplete inclusion; something on which we draw in order to proceed. One could argue that America's mythical democracy has inspired many people—here and abroad—to undertake amazing things.

Here at home, as more people realize the inequities, political corruption, etc., one could also argue that the myth is losing its power to glue us together. One of the challenges of creating a real democratic process is grappling with the meaning and details of our myths.

One myth is that of unlimited economic growth. In the interest of getting this to you prior to the arrival of the millennium, let's just say for now that producing more "stuff" in an attempt to lift all boats doesn't seem to have much to recommend it—at least as traditionally described. We could discuss why

so many positive aspects of human activity are left out of the Gross Domestic Product; whether “sustainable” economic growth will work where “strength through exhaustion” hasn’t, and so forth. The essential debate needs to be about “by whose authority?”, or who is in charge and who will set the values—not about “how much.” But I say we put this one in committee for the time being.

2. TO WHAT EXTENT DID FEAR OF CORPORATIONS MOTIVATE THE REVOLUTIONISTS

You opined that “it distorts history to exaggerate the degree to which the Founding Fathers were concerned about corporate power per se . . . since there were so few corporations of any sort, that issue was not of central concern to those who favored independence.”

POCLAD needs to understand better to what degree corporate power was of concern. We are discovering, however, that corporate power was not a small concern. By 1776, many colonists knew first hand, or from contemporary culture, about the global corporations of their day . . . and understood that they were unconstitutionalized centers of governing power which they did not want to see arise in the U.S. These corporations were “chips off the old block of sovereignty,” as Thomas Hobbes said. They exercised the powers of sovereignty: they governed, tried, convicted, punished, impressed people into the military, built armadas, concluded treaties, and the like.

A few examples of pre-Revolutionary British corporations and their purposes:

- The Africa Company (1553): chartered to participate in the slave trade.
- The Russia Company (1553): chartered to secure trade concessions with Russia.
- The Spanish Company (1577): chartered to secure trade concessions with Spain.
- The Levant Company (1581): chartered to secure trade concessions with Turkey.
- The East India Company (1608): chartered in perpetuity by King James I, dissolved in 1858, with all its dominions becoming part of the British Empire. Their common mission: get monopoly routes and concessions, control decision-making, conquer other peoples in order to buy cheap and sell dear, destroy local cultures and memories of cultures, and, finally, to create dependence.
- In *Taking Care of Business*, Grossman and Adams cite pamphleteer Thomas Earle: “Chartered privileges are a burthen, under which the people of Britain, and other European nations groan in misery.”
- The East India Company was saved from bankruptcy with a bailout of tax dollars from Parliament. That the fortunes of the rich and powerful, including members of Parliament, were saved by that bailout, and that it was the East India Co.’s tea thrown into Boston Harbor, were not lost on the colonists.
- Again, from *Taking Care of Business*, “[The colonists] knew that English kings chartered the East India Co., the Hudson’s Bay Co., and many American colonies in order to control property and commerce. Kings appointed governors and judges, dispatched soldiers, dictated taxes, investments, production, labor and markets. The royal charter creating Maryland, for example, required the colony’s exports be shipped to or through England.”
- Leaders of the Revolution, many of whom were in the planter class like Washington and Jefferson, were burdened by these conditions as were common colonists. Though one could argue that some of them were against these Crown corporations only because they themselves did not own them.

Because of these kinds of experiences, post revolutionary elected legislatures in the states were given the power to charter and uncharter corporations, with this power used to keep corporations on a very short leash. They were created for very specific purposes (build a road, construct and operate a textile mill); were limited in their capitalization; were prevented from owning another corporation or from owning land not directly needed for the chartered purpose; they were created for a specific length of time; and it was made clear that if they abused the public interest or overreached their chartered purpose, they would be called before the elected representatives of the people and required to prove “by what authority”(quo warranto) they had acted. If found to have violated their purpose, they were declared “beyond the law” (ultra vires) and had their charters revoked.

3. SIMPLIFYING HISTORY

You commented that, “To simplify history and suggest that we merely need to return to some pre-corporate, democratic Golden Age, as POCLAD often suggests, is not a responsible way to build a political movement.”

Nobody in POCLAD believes we ever had such a “pre-corporate democratic Golden Age.” Romanticizing history is always a dangerous undertaking. That is not our intent. It trivializes what we can learn from people who were defeated and whose history was expunged. It trivializes their struggles.

We do, however, have a legal and constitutional historical record placing corporations subordinate

to the people, and making it clear that popular movements consciously intended to keep it that way. These creations of the people were to be defined by and for the people. This was intended to be a democratic arrangement, with people clearly the sovereigns, as the kings had been prior to the Revolution.

We can and should use this history to our advantage. It should be seen as the fundamental and originally intended approach to keeping corporations in their appropriate place in a democracy, not as a passing, quaint bit of early Americana. Just as the Founders defined a very incomplete democracy, to be completed only through generations of struggle, so too is the goal of a democratically-controlled economy left up to generations of struggle.

The last time a movement seriously tried to achieve this goal was during the Populist era, about which Alliance members are certainly familiar. We see our common work as rekindling that spirit of populism and democratic control of the economy appropriate for our time.

We do ourselves and the public a disservice if we don't have an understanding of the past upon which to build a better life today. Those who would change the future need to know from whence we came.

4. DEFINING VS. REGULATING

Further on, you wrote, "The supposed dichotomy between 'redefining' and 'regulating' corporations is not convincing . . . the issue is not either/or. Unless we're talking about abolishing corporations, redefining them will itself constitute a form of regulation."

I can address part of your concern, but none of us should labor under the false impression that somewhere out there exists a 10-point plan to create a democratic economy. We have got to take responsibility for determining how to make corporations serve a public need and no more; how to return our political system to its rightful creators; how to create a democratic culture which will guard against corporations ever again getting off their leashes. How we do these things is clearly the work we have before us.

What POCLAD brings to the task is an understanding that we must address the fundamental problem that corporations are not subservient to their masters (who created them). We believe it is this lack of democratic control which is at the root—not that we've somehow failed to get the right people on the National Labor Relations Board, or that we've lost the fight to keep the EPA inspection division fully staffed.

Again, some background. Part of the reason it is so difficult to even converse in these terms is that it's been a long time since we viewed ourselves as the source of power in this country. And it's hard to believe we could become that source.

We describe ourselves or let others describe us as "consumers," "taxpayers," "stakeholders," "customers," "employees," instead of as sovereign people; as the "We the People" that ratified the Constitution, from whom all legal power in this nation flows. No wonder then that the proper language has atrophied. Like with an unused limb, working it makes it more powerful. Answering concerns like the ones you raise is therefore a valuable exercise. Here are some recent efforts:

- "Defining" speaks to the nature of the corporation: What shall be its purpose? Shall it exist in perpetuity? May it own other corporations? Shall it have the right to participate in our political systems? Shall it have the right of free speech?
- "Regulating" concedes that corporations and/or their agents will define themselves while we try to keep its harms within limits, concede important rights, scrutinize only its behaviors. Section 5, below, shows the difference from today, when corporations are chartered "for any lawful purpose," forever, with no limits on real estate or capital.
- If we define corporations as not having political rights, not having free speech, not being able to propagandize in our schools, then we don't have to write rules for reporting lunches with lobbyists, limiting/reporting campaign contributions, determining how many minutes of news vs. commercials will be on Channel One in schools.
- The difference between "defining" and "regulating" comes down to two central questions "Who is in charge?" and "How is that power exercised?" We are clear on the "who" (i.e., We the People), and history gives us clues on the "how" (i.e., controlled granting of charters, quo warranto hearings, and the like).

What goes into a corporate charter, like the following historic example from Maine, can be simple:

Sect. 1. Lyman Nichols, Benjamin Bates, and William Wood, their associates, successors, and assigns, are constituted and made a body politic and corporate by the name of Nichols Mills, with all the powers and privileges and subject to all the duties and liabilities provided by the laws of this state concerning manufacturing corporations.

Sect. 2. Said corporation is authorized to manufacture cotton, wool, and flax, in the city of Lewiston, to purchase and hold real and personal estate not exceeding twenty-five hundred thousand dollars in value, to build and erect such buildings and machinery as the convenience may require, and make all necessary rules and regulations for the prosecution

of the same, consistent with the laws of the state.

Sect. 3. This act shall take effect when approved.

These definitions allow the corporation to provide a public good or service; they do not allow it to exercise the kinds of powers we don't want to see corporations exercising in a democratic society. Granted, what goes into the general corporation laws of a state are more specific, but we're still focusing on the same general principle here: will We the People define what the large institutions of our society will do, or will we allow a few individuals—controlling huge pools of wealth and the branches of our government—to define our lives and our society for us?

5. IT'S NOT WHAT CORPORATIONS DO WRONG, IT'S WHAT THEY DO

By now, perhaps you can begin to see that this statement Kellman and Morris used at the Alliance convention is not “absolutist” as you described it. Here are some of the ways we elaborate.

First, corporations aren't good or bad. They are institutions we can use to further our society or let them enslave us. Love is good. Hate is bad. Corporations just are.¹

Second, it's not just the most obvious harmful behavior that is at issue, it is the role of corporations in society—their power to rule—that needs changing.

Third, corporations existed for the better part of a century under a system more nearly approaching the “defining” one that we discussed above—much different from the one we've settled for in this century. We don't say corporations shouldn't exist, we are saying they shouldn't exist outside the sovereignty of the people. Rather than designating corporations as “good” or “bad” ones, there are only those corporations as defined by the people or those which are not.

And fourth, the phrase “good corporation” is an irrelevance. It should be that the only corporations we allow to exist and operate are the ones which are subservient, which obey, which do not rebel. If a corporation rebels and acts beyond its authority, it undermines the ability of the people to govern themselves; if we are responsible, we treat that corporation like a cancer and cut it out.

6. CORPORATE RESPONSIBILITY

You write that rejecting this concept “carries with it a similar ambiguity and absolute thinking . . . impl[ies] a rejection of all corporations.”

We are responsible for each corporation's existence. Our creation must perform as we have charged it. If it doesn't, it is our responsibility to take appropriate action or suffer the consequences. “Corporate responsibility” can have no other meaning.

In the face of all we know about corporations, why are so many people obedient? Why do we hang on to the absurd hope that corporations can be made socially responsible? A principal purpose of corporations is to protect the managers and directors from responsibility. Only people can be responsible by exercising our authority over all the institutions we create. We are not accountable when we create monster robots which run rampant in our communities, sallying forth across the world to wreak havoc upon other places and upon other people's self-governance. We are not being socially responsible or civically accountable when we permit our agents in government to bestow our sovereignty upon machines. “Corporate responsibility” implies self-defining by corporate boards, CEO's etc., not by We the People.

7. CORPORATE PERSONHOOD

To answer your statement that “no simple constitutional amendment will erase corporate personhood,” we would say the following.

We don't suggest that any “silver bullet” exists. Constitutional amendment(s) may in fact be a necessary component of our generation's efforts to create a more complete democracy, but there's no such thing as a “simple” constitutional amendment. To amend the constitution for this purpose would require a tremendous change in public consciousness. This can happen only after a historic effort is made to organize and educate the public. That kind of effort is what we intend to create with the help of patriots like yourself.

We're working to engage the nation in debate and action about the proper nature and role of corporations in a democracy. What political and civil rights should it have? Free speech? Should it be allowed to lobby? Should Mobil Oil Corporation be allowed to influence energy policy? Should General Motors Corporation teach us about transportation, or be allowed to buy up trolley systems around the U.S. (as it did), shut them down and replace them with buses?²

When millions of Americans are asking these questions and demanding answers, amending the Constitution will seem like a logical next step.

8. INCREMENTAL CHANGE

You write: “. . . we can build momentum by winning specific victories that protect the environment and improve people's lives, while at the same time increasing awareness of more fundamental issues and laying the groundwork for systemic change. I am not convinced by arguments that it must be all or

nothing and that in the meantime, all we can do is educate.”

There are several related points here. Let me start with the last. Education is indeed work. In fact, if done in a well-organized, methodical fashion, it can be a lot of work. Having attended more meetings than a sane person ever should, I can recall wishing that we would just go out and do something. To hell with all the talk. That sentiment is understandable but can lead to activity that, in the long run, does not really produce any positive change. A favorite saw of mine goes: “The wheel that’s stuck in the mud spins the fastest.”

No one says positive change can’t also be incremental. But what’s the nature of the change? Sometimes a finger in the dike is needed and may even save lives. But can’t we do that and also strategically identify how to accomplish a fundamental shift in power, or at least point out what would be different if we could?

You and I and POCLAD and Alliance members have all organized in a dozen different movements. We’ve observed first-hand the importance of the day-to-day work done in incremental steps, and should never condescend to tell someone that they’re just wasting their time if they don’t work on some “big picture” as we define it.

What we’re doing now is talking with people about the things which I’ve just written to you; listening to their responses in the context of the work they’re doing to stop various corporate harms; and then seeing how together we can stop the harms in ways which take away corporate rights and powers, take away corporate power over our minds, and transfer these rights and powers to people and communities and nature. Along the way we may indeed be engaged in what some may call incremental change, but the nature of it will be transformative.

We are for the incremental shifting of power, but where is that taking place within labor and environmental law over the past 25 years? Aren’t corporations stronger and wealthier and more protected by our government today than then?

All of us have laid a good foundation all these years, going after single issue after single issue, corporate symptom after corporate symptom, corporate behavior after corporate behavior. What we’ve done, what our comrades in arms have done, what we’ve learned, and the critical nature of the times, all tell us we must start changing the rules of the game and stop playing with that damned stacked deck. Many folks are ready for a big leap. Come with us, Wade.

NOTES

1 Corporations are proper objects of our authority, not of our emotions. It is said that “guns don’t kill people, people kill people.” But how guns are used -- and to many their very purpose -- evokes emotion. Corporations, like guns, are tools, objects. We should exercise our authority over these objects, not have an emotional relationship with them. Ed.

2 See “Disappearing Railroad Blues?” in this volume. Ed.